

1 Q Okay. So you were anticipating, based on that initial
2 phone call, that there would probably be an attempt to make a
3 controlled delivery of a package that contained suspected
4 narcotics or drugs?

5 A No, we received a phone call, then we went out to make
6 sure the address actually existed.

7 Q Okay. You did that first?

8 A We did that. We ran a database check on the residence of
9 the location and we came up with the names of Brenda and Rick
10 Vo, and it matched the last name of the intended recipient of
11 the package.

12 Q And this was all done on the 4th of October?

13 A Yes.

14 Q Okay. At that point you did not have the drugs to
15 deliver yet; is that right?

16 A That's correct.

17 Q Once the house was found and determined to exist, that
18 the address was a real address, in other words, was it staked
19 out at any time?

20 A When we took the pictures, we were there for a little
21 bit, but we did not stake it out. We did not sit there for
22 hours looking at it.

23 Q You kind of drove by, took some --

24 A We drove by, we made sure it existed, we took pictures
25 and then we went back to the office.

1 Q Okay. Was any attempt made to ascertain who lived there?

2 A Other than database search, we looked -- we went through
3 a database, I don't remember which one it was, and we got the
4 names of Brenda and Rick Vo at the location.

5 Q All right. And then you went through the process you
6 described, you got a search warrant, you got basically an
7 anticipatory search warrant, right?

8 A That's correct.

9 Q And that warrant allowed you to put the transmitting
10 device in the package?

11 A Yes.

12 Q And allowed you then, once the package had been delivered
13 to the address where it's supposed to go, you could then
14 execute the warrant?

15 A That's correct.

16 Q Did the warrant require you to wait until the beeper went
17 off or the transmitter went off before you executed the
18 warrant?

19 A Yes.

20 Q Okay. So basically, this was truly anticipatory in the
21 sense that you get the warrant ahead of time, you deliver the
22 package, you wait outside; if the beeper goes off, you go in?

23 A That's correct.

24 Q About right?

25 A Yes.

1 Q Okay. And the delivery was scheduled for the 5th, that
2 would be the day after you initially got the call; is that
3 right?

4 A That's when we scheduled it, yes.

5 Q Okay. And it was one of your agents that was going to
6 dress up like a Fed Ex man and make the delivery?

7 A That's correct.

8 Q Now, I gather from your earlier testimony that you had a
9 team of about eight people involved in the execution of this
10 search warrant?

11 A That's correct.

12 Q Or more correctly to say, you had eight people lined up
13 ready to execute it if the conditions the warrant required
14 were met?

15 A There were eight people on scene. They weren't lined up,
16 but --

17 Q Well, on scene.

18 A On scene.

19 Q And they all had specific tasks and jobs to do if the
20 warrant was going to be executed?

21 A Correct.

22 Q You've described one guy had a battering ram to knock the
23 door down?

24 A That's correct.

25 Q And that was his specific task?

1 A That's correct.

2 Q Okay. You had a dog man there with a dog?

3 A He was on scene also, yes.

4 Q And he was the -- he was the guy to go in and they were
5 going to sniff the place out and see if there were any drugs?

6 A That's correct.

7 Q And you had numerous other agents?

8 A That's correct.

9 Q Were all of the agents, dog handler included, armed?

10 A Yes.

11 Q And how were the DEA agents dressed? Describe your
12 attire when you went to the house that day to pay a call and
13 deliver the -- and execute the warrant.

14 A I can't describe everyone's attire, everyone had
15 something different, but we all had entry vests which says
16 "DEA Police" on it.

17 Q Entry vests are like bullet-proof jackets?

18 A Bullet-resistant jackets, yes.

19 Q And they are what color?

20 A Black in color.

21 Q They say "DEA" across the front and the back?

22 A Yes, they do.

23 Q Okay. You guys wearing helmets?

24 A Whoever had a helmet probably was wearing it.

25 Q So some guys were wearing helmets?

1 A Yeah. I think -- I'm not sure who wore a helmet. I did
2 not wear a helmet, though.

3 Q Okay. See, this is beginning to sound a lot like what we
4 see on TV, helmets, goggles, night vision equipment on
5 submachine guns, all that kind of stuff. What -- what were
6 you guys carrying by way of weapons?

7 A Our handguns.

8 Q Submachine guns?

9 A I don't think anyone had one on scene, no.

10 Q Shotguns?

11 A There might have been a shotgun on scene, but that did
12 not go inside the house until after people were taken out of
13 the house.

14 Q Okay. So now the Fed Ex guy arrives and you guys are at
15 the scene waiting, and the Fed Ex man arrives with the
16 package, right?

17 A Special Agent Tom Hughes, yes.

18 Q Okay. And he knocks on the door, someone comes to the
19 door and he delivers the package?

20 A That's what came over the radio, yes.

21 Q You did not personally observe that because you were a
22 block away?

23 A Right. That's correct.

24 Q But he told you what he observed when he delivered the
25 package, didn't he? Didn't he broadcast that?

- 1 A Yes.
- 2 Q He said this kid came to the door, a 12-year-old girl --
- 3 or not 12-year-old, but some young girl comes to the door and
- 4 I gave the package to her; is that right?
- 5 A That's correct.
- 6 Q Did he say that he had asked her: Are you Gabriella Vo?
- 7 That's who this package is supposed to go to?
- 8 A Did he tell me afterwards? Yes.
- 9 Q So he inquired when he delivered the package: Are you
- 10 Gabriella? And she said: Yes?
- 11 A That's correct.
- 12 Q And he delivers the package?
- 13 A Right.
- 14 Q Was a photograph taken of the delivery?
- 15 A No.
- 16 Q So we don't have a picture of the Fed Ex guy standing
- 17 there handing her a package?
- 18 A No.
- 19 Q Okay. Did -- to your knowledge, did Agent Hughes tell
- 20 you later that he inquired of Gabriella who else was home?
- 21 A I don't remember.
- 22 Q Okay. At any rate, how long was it from the time Agent
- 23 Hughes delivers the package to the time the -- the transmitter
- 24 transmits?
- 25 A A couple minutes probably. It wasn't that long.

1 Q And what happened at that time?

2 A After we were advised the transmitter went off, then we
3 drove up to the house, lined up, and then we knocked and
4 announced.

5 Q When you say "lined up," you didn't have eight guys
6 standing in line out there in front of the front door, did
7 you?

8 A Not eight guys. There were, I think, five -- five or six
9 of us at that point.

10 Q And a couple people around back --

11 A Yes.

12 Q -- checking to make sure nobody jumped out a back window
13 and made a run for it?

14 A That's correct.

15 Q And they were all armed?

16 A Everyone was armed, yes.

17 Q And they all had their guns drawn?

18 A The people that were outside with me? Yes.

19 Q Okay. And there's a knock on the door by whom?

20 A Special Agent Vo knocked and announced.

21 Q Steve Vo?

22 A Yes.

23 Q He knocks on the door, and he says what?

24 A He announces: Police depart -- Police. We have a search
25 warrant.

1 Q And does he say that in a conversational tone like I'm
2 speaking right now, or does he say it loud?

3 A No, he said it loud.

4 Q Real loud?

5 A Loud enough for the occupants to hear.

6 Q And does he, like, ring the door bell or does he pound on
7 the door?

8 A No, he knocked on the door.

9 Q Knock?

10 A He knocked maybe a little louder than that.

11 Q (Demonstrating.)

12 A Probably that about.

13 Q Okay. And now you knew going in there was a 12-year-old
14 kid in the house or young girl in the house?

15 A We knew there was a child, yes.

16 Q Okay. And you waited, you say, 30 seconds?

17 A Approximately about 30 seconds. We knocked and we
18 waited; no answer.

19 Q Did you knock more than once?

20 A He knocked more than once.

21 Q Did he announce more than once?

22 A Yes.

23 Q Okay. So there's no response. And so the battering ram
24 guy comes up?

25 A Same person.

1 Q Steve Vo?

2 A Yes.

3 Q So he was ready with the battering ram, he knocks and he
4 stands by. And the battering ram, describe it. What are we
5 talking about here?

6 A Piece of metal about three-feet long with handles on
7 them.

8 Q And it's real heavy?

9 A It -- it has some weight to it. It's not real heavy.

10 Q How heavy?

11 A 20 pounds, 15 pounds maybe.

12 Q Does it have like a blunt front end so that it -- for
13 knocking on the -- knocking the door down?

14 A Yes.

15 Q And the whole object is to knock the door clean off its
16 hinges, if you can, to gain entry immediately?

17 A To open the door, yes.

18 Q Well, open it not by turning the knob?

19 A Right.

20 Q You have to break the lock off or break whatever is
21 holding it in place to get it open?

22 A That's correct.

23 Q And how big a fellow is Mr. Vo?

24 A He's about 5'5", weighs about 150, 160 pounds. I'm not
25 sure.

1 Q And he applies the battering ram to the door?

2 A He hit it a few times, yes.

3 Q And the door goes down?

4 A The door eventually went down.

5 Q Clean off its hinges?

6 A Yes.

7 Q Flat on the ground?

8 A Yes.

9 Q And you -- and who is the first guy in the place?

10 A I was.

11 Q Okay. And when you entered, did you enter at a normal

12 pace or did you go rushing in?

13 A Well, as soon as I entered, the staircase was up there,

14 and I saw the child upstairs. So I stopped her right there.

15 Q Okay. And when people entered, were they yelling loudly

16 as they entered?

17 A They were saying that they were police department.

18 Q And they rushed through the house to secure the premise?

19 A No, first, we -- we had the child upstairs, and then the

20 other person, Khanh Vo, right around the corner. They were

21 taken out of the residence, and then the rest of the house was

22 secured.

23 Q Okay. And the child, who took custody of the child?

24 A I asked her to come down the stairs; she came down the

25 stairs, and Special Agent Cubillos, Alice Cubillos stayed with

1 the child.

2 Q Where was the package, by the way?

3 A It was upstairs in the kitchen.

4 Q So the kitchen to this house is on the upstairs level?

5 A Yes.

6 Q And Mr. Khanh Vo, where was he found?

7 A He was right around the corner behind the staircase.

8 Q On the first floor?

9 A On the first floor.

10 Q So the house is then entered. The people are removed.

11 There were only two people in the house, right?

12 A After we secured the residence, those are the only two we
13 found, yes.

14 Q Okay. So those two people were taken outside, and then
15 the dog handler goes through and basically the search takes
16 place to find the package?

17 A Yes.

18 Q And the package was found intact?

19 A It was opened, it was on the kitchen counter, yes.

20 Q Were the contents removed?

21 A No, it was just opened. You could see the contents --

22 Q The box was sitting there with the flaps open?

23 A Right.

24 Q And that's it?

25 A Yeah. That's correct.

1 Q Okay. And then you proceeded to execute a search of the
2 rest of the house. For what?

3 A Looking for any other drugs, any weapons in the house,
4 any other people. That's what we initially started, go
5 looking for people.

6 Q Did you find any people?

7 A No.

8 Q Find any guns?

9 A We didn't find any guns, no.

10 Q Find any drugs?

11 A No, but the -- the canine indicated that there were
12 narcotics or it indicated positive alert for narcotics in the
13 residence.

14 Q The canine acted like he would act if drugs were present,
15 but no drugs were found?

16 A Correct.

17 Q You are not the dog handler?

18 A No.

19 Q Okay. Let's talk about the interior of the house for a
20 moment. The downstairs level has two -- a two-car garage?

21 A Yes.

22 Q A living room?

23 A Yes.

24 Q A staircase going upstairs?

25 A That's correct.

1 Q And a back bedroom?

2 A Has a back bedroom, a laundry area. There's a bathroom
3 back there also.

4 Q The back bedroom is what you have been describing as a
5 bedroom/office arrangement?

6 A That's correct.

7 Q There was a computer in there?

8 A There was a work station, there were files in there, file
9 cabinet that was all against the wall in that room.

10 Q And the computer was seized too, wasn't it?

11 A Two computer towers were seized.

12 Q So you took them basically thinking there might be drug
13 evidence on the computers?

14 A That's correct.

15 Q But you found out there wasn't any, didn't you?

16 A I don't remember. I -- I didn't look at the analysis.
17 The analysis was sent here to this office.

18 Q I see. But to your knowledge -- nobody told you that
19 they found any drug evidence on either of the computers?

20 MR. MUEHLECK: Objection. Asks for hearsay.

21 MR. WEIGHT: Well, Your Honor, it's part of his
22 investigation.

23 THE COURT: I'll allow it.

24 BY MR. WEIGHT:

25 Q Did they?

1 A No. I was told there were some records, that's all.

2 Q Okay. And the seal-a-meals, there were two of them found
3 in a cardboard box in a closet in the bedroom/office area on
4 the first floor; is that right?

5 A That's correct.

6 Q Okay. And that's what you have up there at the witness
7 box right now as Government's Exhibit 9 and 10?

8 A That's correct.

9 Q In Government's Exhibit 10, you have described a roll of
10 seal-a-meal bags or -- is that right, is that what it is?

11 A Yeah, that's correct.

12 Q And you have described that as being similar to the
13 bags -- to two of the bags that were found in the drug
14 evidence that was brought up from Honolulu; is that right?

15 A That's right.

16 Q These seal-a-meals, are they commercially available?

17 A Yes, they are.

18 Q They can be purchased in department stores and sundry
19 stores all over the country; isn't that true?

20 A That's correct.

21 Q And likewise, the bags or the things that you use to put
22 the stuff in that you are going to seal, like food?

23 A That's correct.

24 Q In the course of your investigation in this case, did you
25 go into the kitchen?

- 1 A We did go to the kitchen, yes.
- 2 Q Did you inspect the refrigerator and freezer?
- 3 A I didn't myself. I'm sure someone else --
- 4 Q Did another agent inspect the freezer and ice box?
- 5 A I'm sure they did.
- 6 Q And the reason they do that is oftentimes in your
- 7 experience drugs are found kept in freezers and ice boxes;
- 8 isn't that so?
- 9 A That's correct.
- 10 Q But no drugs were found in this case?
- 11 A No.
- 12 Q Did you find packages of food in seal-a-meal bags in
- 13 either the freezer or the refrigerator?
- 14 A I did not myself.
- 15 Q Did any other agents find anything like that, to your
- 16 knowledge?
- 17 A I wasn't told of any. I don't know.
- 18 Q So nobody mentioned it to you?
- 19 A No.
- 20 Q The fact of the matter is nobody was looking to see what
- 21 kind of frozen food they had, you were looking for drugs?
- 22 A That's correct.
- 23 Q When the -- strike that.
- 24 To your knowledge, the only evidence that the dog
- 25 actually hit on where there was some evidence that drugs might

1 be involved was the seal-a-meal; is that right?

2 A No.

3 Q No?

4 A No.

5 Q There was something else?

6 A The dog indicated a positive alert to other parts of the
7 house on the upper level.

8 Q And what specifically?

9 A In the hallway and in one of the bedrooms, and the dog
10 was indicating something up in the air.

11 Q He was sniffing around and acting like there might be
12 something in the air?

13 A Something up high.

14 Q Okay. Did you have the dog sniff the money?

15 A Yes.

16 Q Did he alert on the money?

17 A No.

18 Q Did you have him sniff the safe?

19 A I don't know if we had him alert -- sniff on the safe, I
20 don't know.

21 Q And now let's talk about that safe. That safe is a
22 typical little safe that you can buy at Kmart or Wal-Mart or
23 Costco to put in your house, right?

24 A That's correct. Yes.

25 Q We're not talking about some huge bank safe?

1 A No.

2 Q How big is it? Describe it to the jury.

3 A I'd say 18-by-18 inches. I think Century model,
4 something to that effect.

5 Q And how would you gain access to the safe, how do you get
6 into it?

7 A They broke into it. The Los Angeles -- L.A.P.D.
8 detectives broke it, broke the lock and got into it.

9 Q Okay. And in the safe they found money and watches?

10 A Money and watches and the keys to the cars.

11 Q And the keys to the cars. And these are in the master
12 bedroom?

13 A In the master bedroom, in the closet on the ground, on
14 the floor.

15 Q Okay. So the safe was in the closet in the master
16 bedroom?

17 A Yes.

18 Q On the floor. And was there evidence that this master
19 bedroom was occupied by a man and a woman?

20 A Yes.

21 Q When you submitted items to the lab, you use a form you
22 call a DEA-7; is that right?

23 A That's correct.

24 Q And you used one with reference to the items in
25 Government's Exhibit Number 9, which are the seal-a-meals?

- 1 A Yes.
- 2 Q And in that exhibit you asked the lab to look for things?
- 3 A Yes.
- 4 Q You asked them to see is there any evidence of drugs on
- 5 either of these devices?
- 6 A That's correct.
- 7 Q And you asked them to see if there were any fingerprints?
- 8 A No, I did not ask for that on this form.
- 9 Q You did not. Did you ask them for them in some other
- 10 form?
- 11 A Later on we contacted the lab and asked for fingerprint
- 12 analysis.
- 13 Q And what did that analysis come back?
- 14 A I don't think there was anything found.
- 15 Q No fingerprints?
- 16 A That's correct.
- 17 Q To your knowledge, did they fingerprint the seal-a-meal
- 18 roll of bags --
- 19 A No.
- 20 Q -- in Government's Exhibit 10?
- 21 A They did not.
- 22 Q They did not?
- 23 A No.
- 24 Q They did fingerprint -- or you did request them to
- 25 fingerprint the bags that had originally contained the drugs

1 that had come up from Honolulu?

2 A That's correct, yes.

3 MR. WEIGHT: I have no further questions of this
4 witness at this time, Your Honor.

5 THE COURT: Mr. Muehleck?

6 MR. MUEHLECK: A moment please, Your Honor.

7 (Pause in the proceedings.)

8 MR. MUEHLECK: May I approach and get the proffered
9 exhibits, Your Honor?

10 THE COURT: You may.

11 MR. MUEHLECK: Thank you.

12 Approach the witness with 23 marked for
13 identification?

14 THE COURT: You may.

15 MR. MUEHLECK: And 16 marked for identification.

16 REDIRECT EXAMINATION

17 BY MR. MUEHLECK:

18 Q Mr. Weight asked you about requesting fingerprint
19 analysis on the packaging material, which is, I believe,
20 Exhibit 19 marked for identification, the box?

21 A Yes.

22 Q All right. And you said you requested it in a document?

23 A Yes.

24 Q Okay. Is that document in front of you?

25 A Yes, it is.

1 Q What -- what is the exhibit number of that document?

2 A Well, it's in both, it's Exhibit 16 and 23.

3 Q Okay. Does one document go to the lab and the other

4 document come back with the response from the lab?

5 A That's correct.

6 Q Okay. The document that went down to the lab requesting

7 analysis is what number?

8 A Number 16.

9 Q All right. And the -- the response back from the lab?

10 A I'm sorry. The one going down to the lab, it's

11 probably -- we send one copy down and they return it back to

12 us.

13 Q Okay. Is a copy, that's what's sent down to the lab kept

14 in the file at the DEA office --

15 A Yes.

16 Q -- in Los Angeles?

17 A Yes.

18 Q Okay. Looking at 16 marked for identification, can you

19 tell us if that indicates or requests a fingerprint analysis?

20 A Yes, it does.

21 Q And who prepared that part of the document, 16 marked for

22 identification?

23 A I did.

24 Q And that was a request for fingerprint analysis of what,

25 Agent Karabinas?

1 A Of the whole item, plastic bags, the drugs, whatever is
2 in there.

3 Q Alice -- you used the name Alice -- Special Agent
4 Sabillos (phonetic)?

5 A Cubillos.

6 Q I'm sorry. Spell, please.

7 A C-U-B-I-L-L-O-S.

8 Q And who does she work for?

9 A For DEA also.

10 Q What was -- what were her -- she was at the site on
11 October 15th?

12 A Yes, she was.

13 Q Excuse me, October 5?

14 A Five, yes.

15 Q And what were her duties?

16 A Well, she's -- she was with us, she was on the line, part
17 of the search team.

18 Q Once you entered into the home, do you know what she did?

19 A She stayed with the child.

20 Q How long after the transmitter went off did you execute
21 or start to go for the door?

22 A Short -- after we were told on the radio that the
23 transmitter went off, we started moving toward the door.

24 Q How much time had expired from when the transmitter went
25 off to when you got moving towards the door?

1 A Probably --

2 Q You got into the residence?

3 A Probably about a minute.

4 Q And how long was it after the package was delivered that
5 the transmitter went off?

6 A Shortly afterward.

7 Q You know what Agent Hughes was doing in the residence
8 after he entered?

9 A He was part of the search team and providing security
10 also.

11 MR. MUEHLECK: One moment please, Your Honor.

12 (Pause in the proceedings.)

13 MR. MUEHLECK: May I retrieve 23 and 16, Your Honor?

14 THE COURT: You may.

15 MR. MUEHLECK: I don't have any other questions for
16 this witness.

17 MR. WEIGHT: I don't have any further questions, Your
18 Honor.

19 THE COURT: Thank you. You may step down.

20 (Witness excused)

21 MR. MUEHLECK: May I call the next witness, Your
22 Honor?

23 THE COURT: Yes, please.

24 MR. MUEHLECK: Call Tom Hughes.

25 TOM HUGHES,

1 called as a witness by the Government, having been first duly
2 sworn, was examined and testified as follows:

3 THE CLERK: Please be seated.

4 Please state your name and spell your last name.

5 THE WITNESS: First name Tom, last name Hughes. Last
6 name spelled H-U-G-H-E-S.

7 DIRECT EXAMINATION

8 BY MR. MUEHLECK:

9 Q Mr. Hughes, how are you employed?

10 A I am currently a special agent with the Drug Enforcement
11 Administration in Los Angeles.

12 Q How long have you been with DEA?

13 A Approximately three years.

14 Q How long have you been working in Los Angeles?

15 A Approximately two-and-a-half.

16 Q Were you employed with the -- and your position in Los
17 Angeles, the last couple of years has been what?

18 A Special agent at LAX narcotics task force.

19 Q Do you know an Ari -- Special Agent Ari Karabinas?

20 A Yes, I do.

21 Q How do you know him?

22 A He's a co-worker of mine.

23 Q On October 5th of last year, what were your duties?

24 A I was to work in undercover capacity to deliver the Fed
25 Ex box to the Vo residence located at 8009 Hulbert Avenue in

1 Playa del Rey, California.

2 Q And as an under -- in an undercover role, how are you
3 attired?

4 A I was dressed in a Federal Express uniform, polo shirt
5 with blue pants.

6 Q Okay. And what did you do that day as the Fed Ex
7 undercover?

8 A I went to the above residence and rang the doorbell. A
9 young female, Asian, approximately teenager, I think 12 years
10 old, came to the door. I said: I have a package for
11 Gabriella Vo. The young lady said: I'm Gabriella Vo. I
12 asked her to sign for it, at which time she did and --

13 Q Let me ask you -- I'm sorry.

14 A Yes, sir.

15 Q You said you had a package?

16 A Yes, sir.

17 Q Would you recognize the package if you saw it again?

18 A Yes, I would.

19 MR. MUEHLECK: One marked for identification, Your
20 Honor, to the witness?

21 THE COURT: You may.

22 MR. MUEHLECK: One admitted, correct? Admitted
23 exhibit, excuse me, to the witness.

24 BY MR. MUEHLECK:

25 Q Agent Hughes, you recognize that?

1 A Yes, I do.

2 Q What is that?

3 A This is the package that I delivered to Gabriella Vo.

4 MR. MUEHLECK: Approach the witness with Exhibit 3.

5 BY MR. MUEHLECK:

6 Q You can put that aside, please.

7 MR. MUEHLECK: Admitted exhibit, Your Honor,
8 photograph?

9 THE COURT: You may.

10 BY MR. MUEHLECK:

11 Q Agent Hughes, would you explain to -- you recognize this
12 exhibit?

13 A This is the Vo residence in Playa del Rey, California.

14 Q Is that the residence you went to on October 5th?

15 A That's correct.

16 Q Could you point or orient us -- orient the jury as to
17 where you went on October 5th to deliver Exhibit 1, the box?

18 A Sure. I parked the car on the sidewalk and walked on
19 foot to this area right here, the area right here on the front
20 door.

21 Q And that's where Gabriella Vo came?

22 A That's correct.

23 Q Did you ask Gabriella Vo any questions or have any
24 conversation with her?

25 A No, I did not.

1 Q How long were you at the front door?

2 A Approximately a minute to a minute-and-a-half.

3 Q Then where did you go?

4 A I as an -- as an undercover, you have to leave the scene
5 immediately. I got in my truck, which was a Fed Ex van, and
6 drove away.

7 Q Did you have occasion to go back into the residence
8 depicted in Exhibit 3 on October 5th, Agent Hughes?

9 A Yes, I did, when the -- the house was secured.

10 Q And what did you do?

11 A I at that time -- the individual there by the name of
12 Khanh Vo was there, and I sat with him until the agents were
13 done searching the residence.

14 Q Did you see a safe at that residence that day?

15 A Yes, I did.

16 Q Okay. And was the safe locked or unlocked when you saw
17 it?

18 A It was locked.

19 Q Okay. And how were you able to get into it? Was it open
20 that day, the safe?

21 A It was opened later in the day with a pry bar.

22 Q Did you ask Mr. Khanh Vo if he knew the combination to
23 the safe?

24 A Yes, I did.

25 Q What was his response?

1 A He did not know the combination.

2 MR. MUEHLECK: Moment please, Your Honor.

3 (Pause in the proceedings.)

4 MR. MUEHLECK: 16 marked for identification,
5 Mr. Weight.

6 Again, to the witness, if I might, Your Honor?

7 THE COURT: You may.

8 BY MR. MUEHLECK:

9 Q Have you seen 16 marked for identification before, Agent
10 Hughes? Can you identify that document?

11 A Yes -- yes, I can.

12 Q How can you identify that document?

13 A I was the one who wrote the document indicating that the
14 methamphetamine had been processed by our agency.

15 Q And what was done with the methamphetamine after it was
16 processed by your agency?

17 A We sent it via Federal Express to the drug lab in
18 San Diego.

19 Q How was it taken to the Fed Ex -- lab in San Diego?

20 A It was sent.

21 Q Wasn't it hand-carried by you, the methamphetamine? Take
22 your time and read the exhibit, if it will refresh your
23 memory.

24 A I will.

25 Q Directing your attention to block 21.

1 A That is correct.

2 Q Can you tell us when you took the methamphetamine to the
3 laboratory in San Diego?

4 A On October 8th, 2002.

5 Q And where did you get it from?

6 A I got it from our safe at the LAX office.

7 Q We're talking about the methamphetamine that was
8 originally seized in Honolulu?

9 A That's correct.

10 Q Do you recall what you did with it when you took it to
11 the lab in San Diego?

12 A I handed it over to Kristin -- if I can spell her last
13 name, F-R-O-E-T-S-C-H-E-R, and she received it and gave me
14 this receipt.

15 Q Who is she employed by?

16 A The Drug Enforcement Administration.

17 MR. MUEHLECK: One moment please, Your Honor?

18 (Pause in the proceedings.)

19 MR. MUEHLECK: No further questions of the witness,
20 Your Honor.

21 MR. WEIGHT: No questions, Your Honor.

22 THE COURT: Thank you. You may step down.

23 (Witness excused)

24 MR. MUEHLECK: Call our next witness, Your Honor?

25 THE COURT: Yes.

STEVE VO - DIRECT

2-102

1 MR. MUEHLECK: Call Agent Steve Vo.

2 Thank you, Agent Hughes.

3 (Pause in the proceedings.)

4 MR. MUEHLECK: Court intends to quit at 12:00, Judge?

5 THE COURT: Correct.

6 MR. MUEHLECK: Thank you.

7 THE COURT: Would save a little time if you had your
8 witnesses.

9 MR. MUEHLECK: They're supposed to be out there,
10 Judge. Let me step outside. I have other witnesses we can
11 take out of order, if the court wishes.

12 I also had them here yesterday, Your Honor.

13 Please step forward, sir, to the lady in the blue
14 jacket.

15 STEVE VO,
16 called as a witness by the Government, having been first duly
17 sworn, was examined and testified as follows:

18 THE CLERK: Please be seated.

19 Please state your name and spell your last name.

20 THE WITNESS: First name is Steve, last name is Vo,
21 spelled V-O.

22 DIRECT EXAMINATION

23 BY MR. MUEHLECK:

24 Q How are you employed, Mr. Vo?

25 A Sir?

- 1 Q How are you employed?
- 2 A I am employed with the Drug Enforcement Administration.
- 3 Q In what capacity?
- 4 A I'm a special agent investigator for the Drug Enforcement
- 5 Administration.
- 6 Q How long have you been a special agent with DEA?
- 7 A Approximately five years.
- 8 Q And where are you assigned?
- 9 A Los Angeles field division.
- 10 Q Were you working with the Los Angeles field division
- 11 office or with the field division of the Los Angeles DEA on
- 12 October 5th of last year, 2002?
- 13 A Yes, sir.
- 14 Q What were your duties that day, Agent Vo?
- 15 A Assisting fellow agents.
- 16 Q Doing what?
- 17 A Doing a search warrant on a residence.
- 18 Q Do you recall where that residence was?
- 19 A Yes, sir.
- 20 Q Where was it?
- 21 A It's 8009 Hulbert Street in Playa del Rey.
- 22 Q In California?
- 23 A Yes, sir.
- 24 Q Is that Playa del Rey, is that a suburb of Los Angeles?
- 25 A I --

- 1 Q Okay.
- 2 A I don't know.
- 3 Q All right. What were you -- what particularly did you do
- 4 to assist the other agents that day, October 5th?
- 5 A I was in seizing the property at the residence.
- 6 Q Seizing property?
- 7 A Yes, sir.
- 8 Q Did you help execute the actual warrant and enter the
- 9 property?
- 10 A Yes, sir.
- 11 Q What did you do to enter the property?
- 12 A I was the -- I was the knock and announce.
- 13 Q Explain what you mean to the jury, you were the knock and
- 14 announce?
- 15 A Well, basically we had a team lined up at the front door.
- 16 I was the man to approach the front door and announce the
- 17 police present.
- 18 Q How do you announce that?
- 19 A "Police, police, federal search warrant."
- 20 Q Do you announce it in the same voice that you and I are
- 21 talking this morning?
- 22 A No. A higher voice.
- 23 Q Louder voice?
- 24 A Yes, sir.
- 25 Q Okay. And did you do -- do so that morning with a loud

1 voice?

2 A Yes, sir.

3 Q Then what did you do?

4 A Then approximately 30 seconds there's -- there's no
5 answer.

6 Q Was there an answer?

7 A No, sir.

8 Q Then what happened?

9 A Then I have to knock the door down.

10 Q How did you knock the door down?

11 A With the breacher.

12 Q I'm sorry?

13 A With the --

14 Q Did you say breacher?

15 A Yeah.

16 Q To breach you mean?

17 A To breach the door down.

18 Q And you call it a breacher?

19 A Yes.

20 Q Have you ever heard it called a ram?

21 A A ram, yes.

22 Q How did you proceed to breach the door?

23 A Uh.

24 Q Stand up and show us, please.

25 A I use -- I use force, pulled it back and just hit the

1 door (demonstrating).

2 Q How many times did you have to hit the door?

3 A A lot of times because it's a -- it's a big door.

4 Q Did you knock -- were you able to breach that door?

5 A Yes.

6 Q And did the door come off the hinges?

7 A Yes.

8 Q Then what happened?

9 A Then the whole team entered the residence.

10 Q Sit down, please, sir. Thank you.

11 Whole team entered the residence?

12 A Correct.

13 Q And you said you seized property that day?

14 A Yes, sir.

15 Q What did you seize, Mr. Vo -- Agent Vo?

16 A My duty was to seize and process the -- the Rolexes,
17 watch.

18 Q How many Rolex watches did you seize?

19 A There were -- there are four -- five. I'm sorry, five.

20 Four of them, 18 karat gold, diamonds.

21 Q And the fifth?

22 A And one female.

23 Q And a female watch?

24 A Four men and one female.

25 MR. MUEHLECK: Mr. Weight.

1 Approach, Your Honor, with 4 marked for
2 identification?

3 THE COURT: You may.

4 BY MR. MUEHLECK:

5 Q Mr. Vo, can you see 4 marked for identification?

6 A Yes, sir.

7 Q Can you identify this photograph?

8 A Yes, sir.

9 Q What is this photograph of?

10 A There are five Rolex watch.

11 Q And where were they from?

12 A From the residence, inside the safe in the master
13 bedroom.

14 Q October 5th of last year?

15 A Yes, sir.

16 Q At the residence you just spoke about?

17 A Yes, sir.

18 Q Does this photograph accurately depict and portray the
19 watches on that day, October 5th of last year?

20 A Yes, sir.

21 MR. MUEHLECK: Offer the exhibit, Your Honor.

22 MR. WEIGHT: No objection.

23 THE COURT: Government's 4 is admitted.

24 (Government's Exhibit 4 was received in evidence.)

25 BY MR. MUEHLECK:

1 Q Were they all --

2 MR. MUEHLECK: May I publish, Your Honor?

3 THE COURT: You may.

4 MR. MUEHLECK: If I could stand over here once more,

5 Judge?

6 THE COURT: You may.

7 MR. MUEHLECK: Thank you.

8 The pointer, may I, Ms. Miwa?

9 THE CLERK: Yes.

10 MR. MUEHLECK: Thanks a lot.

11 BY MR. MUEHLECK:

12 Q Agent Vo, do you see the ladies' watch that you're

13 talking about? Would you point it out for us?

14 A This is the ladies'.

15 Q On the far left-hand side?

16 A Yes, sir.

17 Q Okay. Were they -- all the watches when seized, were

18 they in this -- this box marked Rolex?

19 A Yes, sir.

20 MR. MUEHLECK: Moment please, Your Honor.

21 (Pause in the proceedings.)

22 MR. MUEHLECK: I don't have any other questions for

23 the witness, Your Honor.

24 MR. WEIGHT: No questions.

25 THE COURT: Thank you. You may step down.

1 (Witness excused)

2 THE COURT: Next witness?

3 MR. MUEHLECK: Next witness was a Mr. Goldberg, Gary
4 Goldberg, Your Honor.

5 GARY GOLDBERG,
6 called as a witness by the Government, having been first duly
7 sworn, was examined and testified as follows:

8 THE CLERK: Please be seated.

9 Please state your name and spell your last name.

10 THE WITNESS: My name is Gary Goldberg,
11 G-O-L-D-B-E-R-G.

12 DIRECT EXAMINATION

13 BY MR. MUEHLECK:

14 Q Mr. Goldberg, how are you employed?

15 A I'm a senior forensic chemist for the U.S. Drug
16 Enforcement Administration.

17 Q How long have you been a chemist with the DEA?

18 A Almost 21 years.

19 Q And where are you assigned, sir?

20 A Our laboratory is in Vista, California, which is in
21 San Diego.

22 Q And let me ask you a little bit about your training, if
23 you would, please, in the field of chemistry, I guess.

24 Tell us about that.

25 A I have a Bachelor's of Science degree in chemistry from

1 Northern Arizona University, and I completed a ten-month
2 training program at the laboratory before becoming a forensic
3 chemist.

4 Q And your duties as a forensic chemist with DEA at the
5 Vista laboratory?

6 A My primary duty is to analyze exhibits that are submitted
7 to the lab to determine if they contain controlled substances
8 or not. I also testify in court, I assist agents in the
9 seizure of clandestine laboratories, and I conduct training
10 for various police law enforcement personnel as well as other
11 chemists in various aspects of my job.

12 Q How many times have you had the opportunity or the duty,
13 I guess I should say, to analyze compounds for the presence of
14 controlled substances? That is, to act as a forensic chemist,
15 how many times have you had that opportunity?

16 A Approximately a little over 9,000 times.

17 Q Have you ever been accepted as an expert in the field of
18 forensic chemistry for the determination of the presence of
19 controlled substances?

20 A Yes, I have.

21 Q On what -- in court, in a courtroom before?

22 A Yes.

23 Q How many courts roughly? How many times has that
24 happened?

25 A Approximately 150 times.

1 MR. MUEHLECK: Your Honor, I'm going to offer the
2 witness as an expert in the field of forensic chemistry for
3 the determination of the presence of controlled substances.

4 THE COURT: Mr. Weight?

5 MR. WEIGHT: Voir dire?

6 THE COURT: You may.

7 VOIR DIRE EXAMINATION

8 BY MR. WEIGHT:

9 Q Is it Dr. Goldberg or Mr. Goldberg?

10 A No, sir, just mister.

11 Q You hold a Bachelor's Degree from Northern Arizona
12 University?

13 A Yes, sir.

14 Q In chemistry?

15 A Yes.

16 Q What subsequent training have you had in chemistry?

17 A Pardon me?

18 Q What subsequent training have you had in chemistry since
19 you left the university, Northern Arizona University?

20 A The training program at the DEA laboratory, which was
21 specifically designed for identifying controlled substances as
22 well as testifying, seizing clandestine laboratories, so it
23 was specific to the job. I have since also taken many
24 training classes which have been provided by instrument --
25 instrument manufacturers in the operation of the various

1 instruments that we use, as well as several universities
2 pertaining to the theory of the various instrumental
3 techniques that we use.

4 Q Well, what training, then, did you receive from the DEA
5 in how to analyze for drugs?

6 A That was a forensic chemist training program that was
7 in-house at our laboratory. There was -- there at the time
8 was a chemist assigned as the training officer in the
9 laboratory, and one of his responsibilities was to train new
10 forensic chemists in how to do the job.

11 Q And how long does that training take or how long does it
12 run?

13 A It took me, because there were several breaks involved
14 because part of my time in training was spent as a co-op
15 student, so I actually had not graduated from college yet. So
16 between -- for the actual amount of time that I was in the DEA
17 lab training, it was approximately ten months.

18 Q So the actual training time, if you put it all together,
19 would be about ten months?

20 A Yes, sir.

21 Q Okay. And that was under the supervision of whom?

22 A The chemist, who was the training officer at our lab at
23 the time, was Robert Arnold.

24 Q And what is his background?

25 A He had been a DEA chemist for at that point probably at

1 least 15, 18 years, but I don't know his educational
2 background.

3 Q All right. So you received your chemistry degree, a
4 Bachelor's of Chemistry -- a Bachelor of Science?

5 A Yes.

6 Q In chemistry from Northern Arizona University and
7 immediately went to work for the DEA; is that right?

8 A That's correct.

9 Q And you had some in-house training?

10 A Yes, sir.

11 Q And then the instrument manufacturers who want you to
12 buy their instruments come by and teach you how to use them;
13 is that right?

14 A The instrument manufacturers offer a whole variety of
15 training classes in various aspects of, yes, in fact quite
16 often the instruments that they sell. But we already have --
17 would have purchased the instruments before I would have gone
18 and taken the classes.

19 Q And how long do these classes last? Let's talk about one
20 specific instrument. Let's take a mass spectrometer, for
21 example.

22 MR. MUEHLECK: Well, I'm going to object because now
23 we're getting beyond the voir dire and we're getting into
24 cross-examination.

25 MR. WEIGHT: Your Honor, we're getting into voir

1 dire --

2 THE COURT: I'll allow it.

3 MR. WEIGHT: Okay.

4 THE WITNESS: I took, I can recall at least two
5 classes, more than that, probably at least three classes that
6 were specific for mass spectrometers; two of which were in
7 Cincinnati, Ohio. One was a basic theory class, I believe.
8 Another one was an operation class as far as how to operate a
9 particular instrument that we had at the laboratory. There
10 was another one that I took in Orlando, Florida, which was
11 advanced interpretation of drugs of abuse. So it was
12 interpreting the spectra that you -- we obtain from the
13 instrument.

14 BY MR. WEIGHT:

15 Q Well, how long do these classes last, are we talking a
16 couple of hours or a couple of days, this training?

17 MR. MUEHLECK: Well, I'm going to object unless we're
18 more specific. So I'm going to object to the form of the
19 question here.

20 THE COURT: I'll allow the question.

21 THE WITNESS: The two that I took in -- in
22 Cincinnati, Ohio, were both week-long classes. The one in
23 Orlando, the interpretation class, was a two-day class. There
24 was another class, as I'm recalling that I took, actually one
25 of my more recent ones was held in Boston about three years

1 ago. And that was the -- the operation of the newer variety
2 of mass spectrometer that we have in the laboratory and the
3 one that I currently use in the laboratory. So that's at
4 least four that particularly pertain to mass spectrometer that
5 I can remember.

6 BY MR. WEIGHT:

7 Q And gas chromatographs, would it be about the same, same
8 training?

9 A Similar. There's -- there's less theory involved in gas
10 chromatography simply because the spectra are not quite as
11 complex and the information that you get from a gas
12 chromatograph is not as specific as a mass spectrometer.

13 The first training class I ever took was in
14 Santa Clara, California, and that was a gas chromatography
15 class. So considering that was so early in my career, it was
16 probably a basic operation and theory of the gas
17 chromatograph. And I don't recall any other specific gas
18 chromatography classes.

19 Q You say you have done teaching as part of your current
20 employment?

21 A Yes, sir.

22 Q Who do you teach?

23 A I am currently -- as I described before, when I was in
24 training, there was a laboratory training officer. Well, I am
25 currently the laboratory training officer, and right at this

1 particular time I have seven forensic chemist trainees under
2 my guide in the laboratory going through the forensic chemist
3 training program.

4 I have conducted classes for all of the division
5 field offices that we service pertaining to clandestine lab
6 safety, drug identification, field testing. I've conducted
7 classes for so far two U.S. Attorneys' offices in the details
8 of my job that pertain to their work and currently trying to
9 schedule a few more of those classes.

10 I have participated as a moot court instructor for
11 three of the DEA basic forensic chemist classes which are held
12 in Quantico, Virginia. I have taught drug synthesis at least
13 three or four times at the basic clandestine laboratory
14 certification schools, for those schools are for other
15 chemists, DEA agents, as well as state and local police
16 officers who are going through the DEA clandestine lab
17 certification program. I've conducted various seminars as
18 well. One last summer was for the National College of
19 District Attorneys. I've conducted seminars for the
20 California Narcotics Officers Association. I'm sure there's
21 more.

22 Q All right. You indicated that you have testified as an
23 expert witness in court; is that right?

24 A Yes, sir.

25 Q How many times in United States District Court cases?

1 A Of the approximately 150 times that I've testified,
2 probably two-thirds of those have been in U.S. District Court.

3 Q Okay. And have you published -- as part of your being a
4 chemist, have you written articles for publication in
5 professional magazines or written books?

6 A No, I have not.

7 MR. WEIGHT: I have no further questions, Your Honor.
8 And -- are you proffering him as an expert witness?

9 MR. MUEHLECK: (Nods head up and down).

10 MR. WEIGHT: In what field?

11 MR. MUEHLECK: What I offered Mr. Goldberg was as a
12 forensic chemist in the field to determine the presence of
13 controlled substances. That's the field of forensic
14 chemistry.

15 MR. WEIGHT: In that case, I have a few more
16 questions.

17 BY MR. WEIGHT:

18 Q In the course of your employment, have you had occasion
19 to analyze substances for presence of methamphetamine?

20 A Yes, I have.

21 Q On how many occasions, roughly?

22 A Roughly, about 2,000 occasions.

23 Q Okay. And have you had occasion to testify in court with
24 reference to your findings?

25 A Yes, I have.

1 Q How many times, on meth cases?

2 A I would guess maybe about 25 or 30 times.

3 Q When was the most recent?

4 A I don't recall exactly what some of the last times that
5 I've testified on, but I know I distinctly remember a time in
6 Saipan last June. So about ten months ago, 11 months ago, and
7 I know that was for methamphetamine. And I've probably
8 testified six or seven times since then, but I can't remember
9 exactly what the drugs were in those.

10 Q Okay.

11 MR. WEIGHT: No further questions. And he is
12 acceptable to the defense.

13 THE COURT: Very well. The court finds that
14 Mr. Goldberg is qualified to testify as an expert in the area
15 of forensic chemistry for the determination of the presence of
16 controlled substances.

17 And with that, we'll break for lunch. Please be back
18 at 1 o'clock.

19 (A recess was taken from 12 o'clock p.m. to 1:10 p.m.)

20 THE COURT: Please proceed, Mr. Muehleck.

21 MR. MUEHLECK: Yes, Your Honor. Thank you.

22 RESUMED DIRECT EXAMINATION

23 BY MR. MUEHLECK:

24 Q Mr. Goldberg, where is the lab located that you work at?

25 A Lab is currently located in Vista, California.

1 Q And in October of last year, where was it located?

2 A In National City, California.

3 Q And is that near a major metropolitan area, you have one
4 of those -- that you mentioned?

5 A They're both in the San Diego metropolitan area.

6 Q What's the equipment that you have in the lab that you
7 use to do the analysis of -- for controlled substances?

8 A Primarily the equipment that I utilize, one is an
9 infrared spectrophotometer, another one is a gas
10 chromatograph. I utilize a microscope for certain analysis.
11 A mass spectrometer I also utilize for certain analysis, and
12 those would be the four largest instrumental type pieces of
13 equipment that I use.

14 Q Are those pieces of equipment you mentioned state of the
15 art, so to speak?

16 A Yes, they are.

17 Q Let me ask you --

18 MR. MUEHLECK: If I might approach with Exhibit 6
19 marked for identification?

20 THE COURT: You may.

21 BY MR. MUEHLECK:

22 Q Exhibit 6 marked for identification, have you seen this
23 before?

24 A Yes, I have.

25 Q Okay. Where have you seen this before?

1 A I took that picture on my work area in the laboratory,
2 and the original of it I provided to you Tuesday morning when
3 I was in your office.

4 Q Was this -- what was it taken of, sir?

5 A That is Exhibit Number 1 in R4-03-0006, and that was the
6 exhibit that I performed an analysis on.

7 Q Did you write a report concerning that analysis -- that
8 analysis, sir?

9 A Yes, I did.

10 MR. MUEHLECK: 16 marked for identification.

11 Approach the witness with 16 for identification?

12 THE COURT: You may.

13 BY MR. MUEHLECK:

14 Q Have you seen 16 marked for identification before?

15 A Yes, I have.

16 Q How can you tell, sir?

17 A This is a copy of the DEA form number 7 for the case
18 number that I just read off of the photograph and --

19 Q That you just read off of Exhibit 6 for identification?

20 A Yes, Exhibit 6, the photograph that's Exhibit 6.

21 Q Okay.

22 A And I recognize this because it has my signature at the
23 bottom next to my typed name.

24 Q And when did you receive that form, sir?

25 A I first would have received this form approximately

1 October 15th, 2002.

2 Q And what -- as a result of receiving that form, what did
3 you do with Exhibit 16 marked for identification, what did you
4 do with the laboratory, sir?

5 A Once I received this form, that meant that this
6 particular case was assigned to me to analyze, and then I
7 would have proceeded to the vault in our laboratory to sign
8 out the actual evidence, go back to my work area and proceed
9 with my analysis.

10 Q Can you tell looking at Exhibit 16 marked for
11 identification how the materials got into your laboratory?

12 A Yes, I can.

13 Q How -- how did the materials get to your laboratory, sir?
14 The materials for analysis I'm talking about.

15 A The materials for analysis were hand-delivered by Special
16 Agent Hughes.

17 MR. MUEHLECK: Approach, Your Honor?

18 THE COURT: You may.

19 BY MR. MUEHLECK:

20 Q 20 marked for identification, Mr. Goldberg. Will you
21 examine that, please? Can you recognize 20 marked for
22 identification?

23 A Yes, I can.

24 Q How do you recognize it?

25 A I recognize the box, my initials, the date that I first

1 received the box and the person's initials from whom I
2 received it are written on the corner of the label which is on
3 the top of the box. I also recognize it as, this is my
4 writing along the top and along this side with the words
5 "retain for court."

6 Q What was the condition of the box when you received it?

7 A When I first received the box, it was in a sealed
8 condition with an evidence sticker on it indicating that it
9 was still sealed.

10 Q And when was it you first saw it?

11 A On October 15th, 2002.

12 Q Okay. And the contents of the box, would you take a look
13 at that, please?

14 A (Complying).

15 Q Do you recognize the contents of the box?

16 A Yes, I do.

17 Q How do you recognize that?

18 A The -- the plastic bags, which are still inside the box,
19 each have the -- these are the four original plastic evidence
20 envelopes that the material was contained in inside the box.
21 And I recognize each of them because the strip that I cut off
22 of each bag to open it at the bottom is still inside each bag
23 with my initials, the date, the case number and lab number on
24 them.

25 And then the other bags here are the bags in which I

1 supplied and put all of the remaining material after I
2 completed my analysis in. Again, my signature is on each bag
3 and the date which I sealed it up. The lab number of this
4 particular exhibit and the weight of each bag after I sealed
5 it up is on there. And I could also recognize my writing, my
6 initials, the date and the identification of the exhibit on
7 the contents of -- of each of the three bags.

8 Q Why did you put them in different bags, sir?

9 A When -- our procedure is when we analyze seizures which
10 are more than 2 kilograms of a Schedule II controlled
11 substance, we're instructed to repackage them. So 2 kilos are
12 set aside as a sample to be retained for court and any excess
13 of 2 kilos -- this is not -- does not apply to cocaine, but of
14 all of the rest of the Schedule II drugs, the excess of 2
15 kilos is separated in order to more quickly be able to destroy
16 it to avoid having to store excess amount in our evidence
17 vault for storage, size reasons and for safety reasons.

18 Q You mentioned a Schedule II. What is that, please, sir?

19 A Schedule II is the way the Code of Federal Regulations
20 defines controlled substances. There are five schedules and
21 each are categorized based on their potential for abuse.

22 Q And methamphetamine is what?

23 A Methamphetamine is a Schedule II.

24 Q When you received the materials in Exhibit 20 -- do you
25 have a background to do fingerprint analysis, sir?

1 A No, sir.

2 Q Do you know if there was a request to do a fingerprint
3 analysis on this exhibit, the materials in Exhibit 20?

4 A Yes, there was a request.

5 Q Okay. And did you take any procedure based upon that
6 request?

7 A Yes, I did.

8 Q And is that request on -- noted on the documents in front
9 of you?

10 A Yes, it is. It's noted on Government's Exhibit Number
11 16.

12 Q All right. What procedure did you follow seeing that
13 there was a fingerprint request made?

14 A Once I noticed that there's a fingerprint request made, I
15 very carefully with gloves unwrap and separate the wrapping
16 material from the actual suspected drug material and reseal
17 the wrapping material in a separate box or evidence envelope,
18 depending on how much is there. And that gets immediately
19 separated, returned to the vault, and subsequently the
20 fingerprint examiner in the laboratory will go and sign that
21 piece of evidence out and conduct his part of the analysis,
22 which would be the fingerprint work. I will then keep the
23 drug material with me, complete my part, which is the analysis
24 of the drug material, reseal it up in a container and then
25 return it to the vault.

1 MR. MUEHLECK: 19 marked for identification.

2 Approach the witness, Your Honor?

3 THE COURT: You may.

4 BY MR. MUEHLECK:

5 Q 19 marked for identification. If you could take a look
6 at that, Mr. Goldberg, and tell me if you can identify that
7 box and the contents?

8 A Yes, I can. When I receive the request in writing on the
9 DEA Form 7 --

10 Q You're talking about Exhibit 16?

11 A Exhibit 16, yes, I'm sorry.

12 Q Okay. Thank you.

13 A For there to be a fingerprint request or a fingerprint
14 exam conducted on the material, this is the box that I went
15 and found, and this is the box that I packaged all of the
16 material to be fingerprinted in.

17 Q You are referring to Exhibit 19?

18 A Exhibit Number 19.

19 Q Cardboard box?

20 A Yes. So I recognize it because on the label there, it's
21 my writing and signature, and I noted on the corner there that
22 this is the material to be fingerprinted.

23 Q And you pass it on then? Or what do you do with it to
24 get the analysis, the fingerprints done?

25 A I return it to the vault.

1 Q All right.

2 A And then the fingerprint examiner will independently
3 check out the -- the evidence from the vault and conduct his
4 analysis.

5 Q Do you know any of the fingerprint examiners in the
6 laboratory at your DEA laboratory?

7 A Yes, I do.

8 Q Who are they?

9 A We currently have one, and his name is Victor Alferos.

10 Q Do you know if he conducted a fingerprint analysis or a
11 test in this case?

12 A I can look in the file to see if there's a record --

13 Q If you don't know independently, that's fine.

14 A I don't know.

15 Q All right. Look in the file if you would then, please.

16 A I really can't tell from the -- the signature on the
17 label and there's no documentation in the particular file.

18 Q That's fine.

19 MR. MUEHLECK: Let me retrieve 19, please, if I
20 could, Your Honor.

21 THE COURT: You may.

22 BY MR. MUEHLECK:

23 Q Let's go back to Exhibit 20. And can you tell me briefly
24 what you did to analyze the contents of Exhibit 20?

25 A Yes, the contents of Exhibit 20 were originally in 15

1 clear plastic Ziploc bags. So once I unwrapped each of the
2 bags and put them in substitute clear plastic bags, those bags
3 that I put them into were tared, which means I had weighed
4 them before I filled them up. So once I had filled them up, I
5 proceeded to obtain a net weight, and that's the weight of the
6 actual powder material without any of the wrappers.

7 Q And, Mr. Goldberg, let me interrupt you here. Exhibit 6,
8 you mentioned the bags and you mentioned taking the
9 photograph, Exhibit 6 in my hand?

10 A Yes.

11 Q Is what's in Exhibit 6 in front of you?

12 A Yes.

13 MR. MUEHLECK: Offer Exhibit 6 into evidence, Your
14 Honor.

15 MR. WEIGHT: No objection, Your Honor.

16 THE COURT: Exhibit 6 is admitted.

17 (Government's Exhibit 6 was received in evidence.)

18 MR. MUEHLECK: May I publish then, Your Honor?

19 THE COURT: You may.

20 MR. MUEHLECK: Maybe I can publish from up here and
21 Mr. Goldberg can tell us where this shot was taken.

22 THE COURT: You may.

23 THE WITNESS: What's depicted in the photograph of
24 Exhibit Number 6 is the 15 original Ziploc bags which
25 contained the crystalline material that I was to analyze. And

1 this is in our old laboratory. This was my bench top area
2 where I conducted all of my work. So this sign in the picture
3 was prepared by me with the case number, exhibit number,
4 that's the lab number, where it was seized, the date it was
5 seized, those are my initials and the date that I was taking
6 the photograph.

7 Q This is in your physical lab then?

8 A Yes.

9 Q And this case number, that's the control number within
10 Drug Enforcement Administration?

11 A Yes, the case number is a number that is generated by the
12 submitting office. R4 is the designation for the Honolulu
13 office. The "3" is the fiscal year it was received. And then
14 every time they just take out a new case, the number
15 progresses from one to as high as it gets throughout that
16 fiscal year.

17 Q Do you see that number on Exhibit 16 marked for
18 identification in front of you?

19 A Yes, I do. That's listed as the file number in Section
20 2A.

21 Q Thank you. If I could please ask you to continue in the
22 examination you did. You were talking, I think, the tare
23 weight you were talking?

24 A Yes. So once I used -- used the substitute bags to
25 obtain the net weight, which is, like I said, the actual

1 weight of the powder material in question, I conducted a
2 series of screening tests before combining the material in
3 each of the 15 different bags. And the purpose for conducting
4 a screening test is to give me an idea of whether or not the
5 contents of each of the 15 bags are the same before I go ahead
6 and form a composite. So in this particular case I conducted
7 two screening tests; one is called a marquis test and one is
8 called the nitroprusside test.

9 Q Please explain those briefly.

10 A Each of the test involves dropping just a drop of -- out
11 of like a medicine dropper onto a small amount, just a couple
12 milligrams, of the powder. And a specific color change will
13 occur if in fact the material is what it's suspected to be.

14 So for methamphetamine with the marquis test, it's
15 going to turn orange and then it's going to slowly get dark to
16 a brown color. And with the nitroprusside test, once I drop
17 the solutions on, it will turn bright blue. And each of the
18 instances of all 15 bags that happened in this case.

19 Q So, what did that mean to you then, the screening test
20 and the marquis reaction and the other reaction?

21 A Well, it indicated to me two things: That it was in
22 fact -- they did at least screen positive for methamphetamine,
23 although that's not a specific test. But, more importantly,
24 it indicated to me that the contents of each of those 15 bags
25 were more than likely the same. And then I can go ahead and

1 form a composite, which would allow me a more manageable
2 sample size to analyze -- conduct the rest of my test on, but
3 that sample -- that smaller composite would still be
4 representative of the entire contents of the 15 bags.

5 Q So did you proceed --

6 A Yes.

7 Q -- with further examination?

8 A And that's what I did, I formed a composite with portions
9 of each of the 15 bags. The final composite that I narrowed
10 it down to, I ground and mixed thoroughly in order to make
11 sure I was analyzing a homogeneous sampling of the entire
12 sample, and then I proceeded to conduct my instrumental
13 analysis on that material.

14 Q What is the instrumental analysis that you did on the
15 items, the compounds in Exhibit 6, please?

16 A The instrumental analysis included an infrared
17 spectrophotometer test and two different tests utilizing the
18 gas chromatograph.

19 Q Okay. Can you keep it simple for me here or maybe
20 explain it briefly, and what we're looking for, how it works?

21 A Sure. The infrared spectrophotometer is a specific form
22 of identification. It uses infrared radiation that is shined
23 into the molecule, and each different molecule absorbs
24 infrared radiation at a particular wavelength at a different
25 percentage. And so based on how much at the various

1 wavelengths the sample absorbs, a spectra is generated and
2 that spectra from the sample is compared to a known standard.
3 And if they match, that's the basis for the identification.

4 So in this particular case, the infrared
5 spectrophotometer indicated that the material was in fact
6 methamphetamine hydrochloride.

7 The second test I performed utilizes the gas
8 chromatograph, and that test is done to determine the isomer
9 of the methamphetamine. And in this case the methamphetamine
10 was the D-isomer.

11 And in the third test, which also utilizes the gas
12 chromatograph, is how I determine the percentage or the
13 quantitative part of the analysis. And I go ahead and utilize
14 that test, and it determined that the strength of the
15 methamphetamine was 51 percent.

16 Q Can you give us a net weight of the methamphetamine, sir?

17 A Yes, the net weight of this particular exhibit was 6,669
18 grams.

19 Q Did you report that in Exhibit 16, sir?

20 A Yes, I did.

21 Q And did you sign that and submit it back to the DEA
22 regional office?

23 A Yes, I did.

24 MR. MUEHLECK: Offer 16 into evidence, Your Honor.

25 MR. WEIGHT: Voir dire?

1 THE COURT: You may.

2 VOIR DIRE EXAMINATION

3 BY MR. WEIGHT:

4 Q Mr. Goldberg, there is a reference in block number 25 on
5 Government's Exhibit 16 which says "EX1 was found to contain,"
6 and it talks about methamphetamine HCL. I presume that's
7 hydrochloride?

8 A Yes.

9 Q What is the next term following that?

10 A And dimethylsulfone, that's another compound that was
11 identified in Exhibit Number 20.

12 Q What is dimethylsulfone?

13 A Dimethylsulfone is actually is a vitamin supplement
14 that's utilized primarily in cows and horses. That's its
15 legitimate use.

16 Q Okay. So this stuff that you have here, this mixture, is
17 a mixture of methamphetamine and some diet supplement for
18 cattle?

19 A Yes, sir.

20 Q And according to your -- your report, the strength of the
21 methamphetamine is 51 percent, and so the rest of it was what,
22 the rest of it was the feed supplement?

23 A Most of the rest of it would be the feed supplement, yes.

24 Q Okay.

25 MR. WEIGHT: No objection, Your Honor.

1 THE COURT: 16 is admitted.

2 (Government's Exhibit 16 was received in evidence.)

3 MR. MUEHLECK: Just a little follow-up if I could,
4 Your Honor, please.

5 RESUMED DIRECT EXAMINATION

6 BY MR. MUEHLECK:

7 Q Methamphetamine hydrochloride, you said drugs are
8 scheduled accordance -- in accordance with what, their
9 tolerance or their propensity for abuse, did you say?

10 A Propensity for abuse and their -- how potent they are,
11 their potency.

12 Q Methamphetamine hydrochloride, could you tell me what
13 that is? What do you mean by hydrochloride?

14 A Hydrochloride is a term used to describe what's in
15 chemistry called a salt. And it's the result of what is an
16 organic base in which what methamphetamine would classify as
17 in combination with an acid. And hydrochloric acid would be
18 the acid utilized in this particular case. And when you
19 combine organic base with an acid, one of the results is a
20 salt. And methamphetamine hydrochloride would be referred to
21 as a salt form, one of the salt forms of methamphetamine.

22 Q And that's a Schedule II controlled substance,
23 methamphetamine hydrochloride?

24 A Yes, it is. Actually, the controlled substance is
25 methamphetamine and it's defined as any salt, any isomer or

1 any salt of any isomer of methamphetamine, of which
2 methamphetamine hydrochloride is qualified as that.

3 MR. MUEHLECK: Your Honor, I am going to offer
4 Exhibit 20 into evidence.

5 MR. WEIGHT: No objection, Your Honor.

6 THE COURT: 20 is admitted.

7 (Government's Exhibit 20 was received in evidence.)

8 MR. MUEHLECK: One moment, please, Your Honor.

9 (Pause in the proceedings.)

10 BY MR. MUEHLECK:

11 Q You know a Nicole Payne, sir?

12 A Yes, I do.

13 Q How do you know a Nicole Payne?

14 A Nicole Payne is another one of the chemists that works in
15 the DEA Southwest Laboratory with me.

16 Q A colleague?

17 A Yes.

18 Q How long has she been there, do you know?

19 A Approximately five years.

20 Q Do you know what her training has been?

21 MR. WEIGHT: Your Honor, I'm going to object to this
22 as being beyond the scope of anything. There was no --
23 withdraw the objection. Withdraw.

24 MR. MUEHLECK: I'm not done yet.

25 MR. WEIGHT: I withdraw the objection.

1 BY MR. MUEHLECK:

2 Q Nicole Payne, she's a colleague?

3 A Yes.

4 Q Do you know her -- what her training is, sir, within DEA?

5 A Yes, she would have completed a very similar training
6 program to what I completed, and I believe while she was
7 completing the program, I was actually the deputy training
8 officer at the laboratory.

9 MR. MUEHLECK: I don't have anything else, Your
10 Honor. Thank you.

11 THE COURT: Mr. Weight?

12 CROSS-EXAMINATION

13 BY MR. WEIGHT:

14 Q Mr. Goldberg, if I understand correctly what you did when
15 you received the -- what is now Government's Exhibit 16,
16 that's the DEA-7, that was your first indication to you that
17 you were going to be working on this case; is that right?

18 A Yes, sir.

19 Q And as soon as you got that, then you went and withdrew
20 the drug evidence from the vault?

21 A It may not have been that exact day, but once I had the
22 DEA Form 7 or the -- what was the original of Government's
23 Exhibit 16 in my possession, it was on my docket, so to speak,
24 to -- when I finished whatever I may have been doing at that
25 particular time to obtain that evidence and proceed with that

1 analysis.

2 Q And the -- the DEA 16 -- or the DEA-7, which is
3 Government's Exhibit 16, indicated to you that the analysis
4 that was being requested was for both drug analysis and
5 fingerprint, right?

6 A Yes, sir.

7 Q And so this -- that's why you handled the drugs the way
8 you did, as you testified, with gloves on and you took the
9 original bags and separated the contents, and put the original
10 bags back in the vault; is that right?

11 A Yes, sir.

12 Q That was so that whoever is going to do the fingerprint
13 analysis would have uncontaminated bags to work with?

14 A That's correct.

15 Q At least not contaminated by you?

16 A Correct.

17 Q And you had nothing further to do with those bags once
18 you had taken the content of each of these 15 Ziploc bags, put
19 that into your own bags and put the 15 bags back in the vault;
20 that was the end of your working with them?

21 A Right, once I repackaged all of the material to be
22 fingerprinted in the box that was just up here on the desk a
23 couple minutes ago, I had no further contact with the
24 fingerprinting material.

25 Q And so the only thing you were left to deal with was the

1 drug -- was the material itself, the stuff that had been in
2 the bags?

3 A That's correct.

4 Q Now, do I understand you correctly that you took 15
5 samples, one from each of the bags, and then you did a -- did
6 a screening test, actually two screening tests on each sample?

7 A Yes, sir.

8 Q And that was to determine whether each of the 15 bags
9 contained the same type of material?

10 A Yes.

11 Q And you concluded that it did?

12 A Yes.

13 Q Now, tell me about the -- tell the jury about this
14 composite. How do you create this composite that you later
15 test? What -- what do you do?

16 A Okay. What I did in this particular case was I have a
17 large spoon and it's about 18 inches long, it's a silver metal
18 spoon -- not silver metal but silver in color metal spoon.
19 And what I would have done is put the spoon into each of the
20 Ziploc bags, mixed the contents, and then taken a spoonful out
21 of each bag, put a spoonful of -- so 15 spoonfuls on a large
22 brown piece of paper, taken the contents, then mixed them up
23 completely with a spatula and a spoon until I got them in kind
24 of a cone, like a pile. Take the spatula and proceed to take
25 that pile and quarter it, and continue to quarter it down

1 until I get what I feel is a reasonable amount, usable amount
2 as a final composite. And I can tell you approximately how
3 many grams that turned out to be if you would like.

4 Q Okay. Well, I -- I'm trying to follow you. Basically
5 you're taking a sample from each one of 15 bags and putting it
6 into one pile?

7 A Right.

8 Q Stirring it up and then subdividing that pile?

9 A Yes, sir.

10 Q Into how many parts?

11 A Four. And then I continue to quarter it until I get one
12 part down to a size that I want to use as my final composite.

13 Q So you don't use all 15 spoonfuls, you just use a small
14 portion of that?

15 A Right, the actual material that goes into the instruments
16 to be tested is a portion of what originally was included in
17 the 15 spoonfuls.

18 Q Okay. And so how long do you mix this together to make
19 sure that you have a good aggregate; that is, that it's all
20 well mixed and not, you know, one side of it happens to be
21 just the one spoonful from one bag and the rest is partially
22 mixed?

23 A About a minute or two.

24 Q Of stirring, just --

25 A Yes, sir.

1 Q Okay. And it's after you do that that you do the
2 instrumental examination of it?

3 A Yes, sir.

4 Q And in this case you use the infrared spectrometer?

5 A Yes, it's infrared spectrophotometer.

6 Q And a gas chromatograph?

7 A Yes, sir.

8 Q Anything else?

9 A No. That would have been the two instruments that I
10 utilized in this particular analysis.

11 Q And one of them tells you that it's meth, the other tells
12 you that it's the D-isomer of meth, and it also tells you what
13 percentage of strength it is?

14 A That's correct, that's what they were used for in this
15 particular analysis.

16 Q What did you use to tell you that the other 49 percent of
17 what you were working with was dimethylsulfone?

18 A The infrared spectrophotometer also was utilized to
19 identify the dimethylsulfone.

20 Q And did you -- and did you get more than just a
21 qualitative analysis on the dimethylsulfone; did you get a
22 qualitative analysis as well?

23 A No.

24 Q So you didn't care how much of dimethylsulfone there was
25 in there?

1 A Right, my responsibility is to quantitate or conduct a
2 quantitative analysis on the controlled substances, and
3 dimethylsulfone is not a controlled substance.

4 Q Now, you've indicated to this jury that you have worked
5 on an awful lot of meth cases over the years. How many did
6 you say?

7 A Approximately 2,000.

8 Q And in all of those cases did you do a qualitative and
9 quantitative analysis the way you've just described to the
10 jury you did in this case?

11 A In all of the methamphetamine exhibits that were greater
12 than 100 milligrams, because that's the requirement for
13 conducting a quantitative analysis, and all of the
14 methamphetamine exhibits that were liquids that contained more
15 than trace amounts of methamphetamine in them, yes, I would
16 have conducted a qualitative and quantitative analysis on
17 those exhibits.

18 Q In how many of those other cases, to the best of your
19 ability to estimate now, did you find dimethylsulfone along
20 with methamphetamine?

21 A Of the 2,000, it would be a very small percentage. I
22 would say with -- from about four years ago and previous to
23 that, I would never have encountered dimethylsulfone. And
24 more recently, within the past four years, it's actually rare
25 that I do not encounter dimethylsulfone in methamphetamine

1 exhibits.

2 Q Is dimethylsulfone used in some way to manufacture
3 methamphetamine?

4 A No, it's not.

5 Q Would you describe it as a foreign contaminant?

6 A I would describe it as a diluent.

7 Q As a?

8 A A diluent.

9 Q Diluent meaning used to dilute it?

10 A Yes, sir.

11 Q To cut it?

12 A Yes, sir.

13 Q To reduce the -- reduce the purity level, is that right,
14 of the meth?

15 A Reducing the purity level would be a result, but actually
16 its purpose would be to enhance the size of the sample in
17 order to be able to sell more of it.

18 Q So it bulks it up, but it dilutes the purity?

19 A That's correct.

20 Q I see. And is this particular substance,
21 dimethylsulfone, itself an illegal -- an illegal thing to have
22 or can you buy it at a pet store or something?

23 A You can buy it at a pet store.

24 MR. WEIGHT: I have no further questions, Your Honor.

25 MR. MUEHLECK: May I proceed, Your Honor?

1 THE COURT: Yes, redirect?

2 MR. MUEHLECK: Yes, very briefly

3 REDIRECT EXAMINATION

4 BY MR. MUEHLECK:

5 Q You said it's rare if you don't see it; you're saying
6 it's common to see it today, this dimethylsulfone?

7 A Yes. Yes, within the last several years it's very common
8 to find dimethylsulfone present in methamphetamine samples.

9 MR. MUEHLECK: Thank you.

10 THE COURT: Anything more, Mr. Weight?

11 MR. WEIGHT: No recross, Your Honor.

12 THE COURT: Thank you. You may step down.

13 (Witness excused)

14 MR. MUEHLECK: We would call our next witness, Nicole
15 Payne, Your Honor. And I'll retrieve these exhibits, if I
16 might.

17 NICOLE PAYNE,
18 called as a witness by the Government, having been first duly
19 sworn, was examined and testified as follows:

20 THE CLERK: Please be seated.

21 Please state your name and spell your last name.

22 THE WITNESS: Nicole Payne, P-A-Y-N-E.

23 DIRECT EXAMINATION

24 BY MR. MUEHLECK:

25 Q Are -- are you employed, ma'am?

1 A Yes, I am.

2 Q How are you employed?

3 A I'm employed as a forensic chemist.

4 Q Where?

5 A I'm employed by the Drug Enforcement Administration in
6 Vista, California.

7 Q How long have you been a forensic chemist with the DEA?

8 A Five years.

9 Q Can you tell us a little bit about your educational
10 background in chemistry?

11 A Yes. I obtained a Bachelor of Science degree in
12 biochemistry and chemistry from the University of California,
13 San Diego.

14 Q And when was that?

15 A In 1996.

16 Q And following graduation from San Diego, UC-San Diego,
17 where did you -- did you go into employment?

18 A Yes, I did. I did work as a research assistant in
19 Pomona, California, for a company called Scientific
20 Pharmaceuticals. I also did some temp work, and in 1998, I
21 was hired by the Drug Enforcement Administration.

22 Q The pharmaceutical company you were with, what was --
23 what were your duties there?

24 A I was a research assistant. So, I altered formulations
25 for dental materials.

1 Q All right. Can you tell us a little bit about your
2 training with the Drug Enforcement Administration as a
3 forensic chemist?

4 A Yes. Once I came onboard with the DEA, I went through an
5 in-house training program in which I learned how to analyze a
6 piece of evidence such as powder tablets, et cetera, that --
7 any type of evidence that would be received from the --

8 Q From the field?

9 A Right. That would be received as evidence to detect the
10 presence of controlled or noncontrolled substances. I also
11 learned the instrumentation that I would use in my duties as a
12 chemist there.

13 Q How many times have you had the occasion to test
14 compounds for the presence of controlled substances since you
15 joined the lab, the DEA, five years ago?

16 A About 1800 times.

17 Q Have you ever testified in court as an expert in forensic
18 chemistry?

19 A Yes, I've testified in federal court approximately five
20 times.

21 Q You ever testify in U.S. District Court in the District
22 of Hawaii --

23 A Yes.

24 Q -- as a forensic chemist expert?

25 A Yes, I have.

1 MR. MUEHLECK: Your Honor, I'm going to offer
2 Ms. Payne as an expert in the field of forensic chemistry for
3 the determination of the presence of controlled substances.

4 THE COURT: Mr. Weight?

5 MR. WEIGHT: Well, Your Honor, I don't think
6 sufficient foundation has been laid at this point in time.

7 MR. MUEHLECK: Well, she's been -- I submit that it
8 has based upon her background, her training, her experience,
9 what she's done, and the fact that she's been qualified as an
10 expert before.

11 THE COURT: Well, I'm going to find her qualified as
12 an expert in the area of forensic chemistry to determine
13 whether illegal drugs are included.

14 MR. MUEHLECK: May I proceed then, Your Honor?

15 THE COURT: You may.

16 BY MR. MUEHLECK:

17 Q Ms. Payne, can you tell us a little bit about the
18 training that you have on the instruments that you use day to
19 day in the laboratory?

20 A The training, you mean the training --

21 Q The training that you've had.

22 A Okay. The training that I received on the
23 instrumentation is hands-on training. Throughout the 12
24 months that I did participate in the training program with the
25 DEA, I used the instruments on a daily basis. There will be

1 some days when I do just straight chemistry techniques, other
2 days where the instrumentation would be used throughout the
3 eight hours a day for the 52 weeks that I was there in
4 training. It was just, you know, lecture by the instrument
5 monitors as well as reading and mostly hands-on type of --

6 Q What instruments do you use at the DEA laboratory where
7 you work?

8 A I use gas chromatographs, mass spectrometers, liquid
9 chromatographs, capillary electrophoresis, infrared
10 spectrometers.

11 Q Let me ask you, Ms. Payne, did you ever see that
12 equipment prior to joining the DEA laboratory?

13 A Yes, I did.

14 Q Where did you see it?

15 A At the University of California-San Diego, I did
16 participate in laboratory courses in which I had an
17 opportunity to use some of those instruments.

18 Q And the laboratory courses you took at the University of
19 California at San Diego were what, can you tell us?

20 A I had a physical chemistry lab, a biochemistry lab, and
21 in each of those labs -- of the biochemistry lab, I used
22 electrophoresis, and in the physical chemistry lab, I was able
23 to use gas chromatograph and maybe the mass spectrometer, but
24 I don't recall.

25 Q Did you take organic chemistry when you were in college?

1 A Yes, I did.

2 Q And did you use any of the equipment in organic
3 chemistry?

4 A In organic chemistry, you use mostly wet chemistry
5 techniques. We also did thin layer chromatography in that
6 course, and that is another technique that I use very
7 frequently in my job.

8 MR. MUEHLECK: Exhibit 17 marked for identification
9 to Mr. Weight.

10 Approach the witness, Your Honor?

11 THE COURT: You may.

12 BY MR. MUEHLECK:

13 Q Ms. Payne, would you look at that document Exhibit 17
14 marked for identification and tell me if you have seen that
15 document before?

16 A Yes, I have seen this document before.

17 Q How do you know you've seen it before?

18 A My signature appears on the report, which is typical of
19 when we receive drug evidence into the laboratory. A piece of
20 paperwork such as this, it's called the DEA-7, accompanies the
21 piece of evidence, and once it's been analyzed, I would have
22 to sign the report.

23 Q And report your findings?

24 A Yes.

25 Q Can you tell us what piece of evidence you're looking at

1 in relationship to this exhibit, Government Exhibit 17 marked
2 for identification?

3 A This evidence was comprised of two sealers, a heat sealer
4 and then another type of sealer. I'm not sure if that one
5 used heat or not, but that's what I was told.

6 Q Did you do an analysis on this piece of evidence that's
7 reflected in Exhibit 17 marked for identification, Ms. Payne?

8 A Yes.

9 Q Can you tell us what examination you -- let me ask you
10 this: You did an examination on these -- of these items?

11 A Yes.

12 Q Had there been a request made of the DEA laboratory to do
13 a fingerprint analysis on these items?

14 A No.

15 Q How can you tell that?

16 A When a fingerprint request is made, it usually will
17 appear on the DEA-7, and it may be highlighted or just written
18 in the remarks section or in one of the other sections saying
19 "fingerprints requested."

20 Q The remark section is what section for the record?

21 A Section 16.

22 Q Okay. And does such request appear in 16, block 16?

23 A No.

24 Q So you did an analysis, you said?

25 A Yes, I did.

1 Q Would you recognize the heat sealers or sealer if you saw
2 them again?

3 A Yes, I would.

4 MR. MUEHLECK: Exhibit 9 to the witness, Your Honor?

5 THE COURT: You may.

6 BY MR. MUEHLECK:

7 Q Would you look at Exhibit 9 received in evidence and tell
8 us if you've seen that before?

9 A Yes, I have.

10 Q How can you tell you've seen it before, Ms. Payne?

11 A My initials appear on the outside of the label, as well
12 as on the inside there is a plastic strip that once was the
13 bottom of the bag. Once I open that, I did initial and date
14 that as well as place the lab number on there. There are also
15 some sample vials that I placed inside the heat-sealed
16 evidence envelope after I was finished with the analysis.

17 Q Can you tell us what type of analysis -- what type of
18 testing you did on that piece of equipment, the heat sealer in
19 Exhibit 9, please?

20 A When I received this evidence, it was submitted for
21 residue analysis. So that is the analysis I performed. I did
22 a gas chromatograph screening test on this and also a gas
23 chromatograph test that is equipped with a mass spectrometer.
24 Oh, pardon me. Wait. Not with a mass spectrometer, it was an
25 infrared detector.

1 Q Okay. And is that -- tell us a little bit more about
2 that if you could, please. You -- you use a piece of
3 equipment to do the test, or how -- how do you do it with this
4 item, this heat sealer that is in Exhibit 9?

5 A What I -- the type of analysis I did is sometimes
6 referred to as a wash.

7 Q A wash?

8 A A wash.

9 Q Please explain.

10 A Okay. I took a beaker, which is just like a glass cup,
11 and I place methanol in that beaker. I also took some
12 methanol and I rinsed some glassware that I was going to use
13 called a Pasteur pipette. It's about this long (indicating).

14 Q You're indicating about what, six inches?

15 A Six or seven inches long.

16 Q All right.

17 A It looks like a little turkey baster --

18 Q Okay.

19 A -- that's made totally, completely out of glass, and I
20 rinse that out. With the residue, you want to make sure that
21 there's no contamination. So I placed the bulb on the end of
22 that and sucked up some of the methanol, and I just washed on
23 a portion of the sealer with the methanol. I sucked that back
24 up and placed it into a sample vial.

25 Before I did that, I want to say that I used the same

1 pipette originally to take some of the methanol that I was
2 going to use for the analysis and I placed that in a sample
3 vial as a blank.

4 Q What do you mean as a blank, what are you doing? What is
5 that for?

6 A A blank is to ensure that the methanol I am using is not
7 contaminated with anything, and I also use that blank to
8 determine that the system is not contaminated also.

9 Q Okay. So you've got a blank and you've got your pipette
10 and you say you're washing. You mean like you turn on the
11 faucet or turn the hose on this -- this heat sealer or what?
12 How much liquid do you use?

13 A It would -- it's just like when you have a turkey baster,
14 you suck up some gravy or some fat. I just took about two, 1
15 to 2 milliliters, and I dropped that on to the sealer, sucked
16 it back up, so that way if there was any drugs or controlled
17 substances, they would dissolve into that methanol. Since I
18 was looking for methamphetamine, I used a solvent methanol
19 that I knew that methamphetamine would dissolve in. So I
20 sucked that back up and placed it into the vial.

21 Q Okay. So you've got this wash material, you put it in a
22 vial; then what do you do with it, Ms. Payne?

23 A I took the sample vial as well as the blank, I ran the
24 blank on the instrument. I basically just placed that on the
25 instrument. There's a syringe on the instrument that will

1 pull up 1 microliter, inject that into the instrument, and as
2 a gas -- it will heat up the liquid into a gas, and that will
3 go through a coiled column and be detected by a flame
4 ionization detector. That's the gas chromatograph screening
5 test.

6 Q How specific is that particular piece of equipment for
7 testing items?

8 A That equipment is not specific. That will simply tell me
9 there was something there. And it will give me a readout that
10 will appear like a peak, just a peak. There's a baseline and
11 then a peak, it will show that there was something there.

12 Q A readout on a piece of paper where there's a chart
13 that's -- with a peak like in a polygraph reading or something
14 like that, a lie detector test?

15 A Yeah, something like that.

16 Q So you got a piece of equipment that you said that's not
17 specific. Did your testing continue?

18 A Yes. I -- the first test, which was not specific, I
19 simply use as a screening test to decide whether or not I
20 would go further with the analysis. Of course, if I didn't
21 see anything, then I could reasonably conclude that there was
22 nothing there.

23 However, in this situation I did see a peak. So I
24 moved on to another piece of instrumentation that would tell
25 me exactly what the peak was composed of.